

Maine Revised Statutes
Title 18-A: PROBATE CODE
Article :

§3-916. APPORTIONMENT OF ESTATE TAXES

(a). For purposes of this section:

(1). "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State; [1979, c. 540, §1 (NEW).]

(2). "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency; [1979, c. 540, §1 (NEW).]

(3). "Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee; [1979, c. 540, §1 (NEW).]

(4). "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; [1979, c. 540, §1 (NEW).]

(5). "Tax" means the federal estate tax, the Maine estate tax whenever it is imposed, and interest and penalties imposed in addition to the tax. [1979, c. 540, §1 (NEW).]

(6). "Fiduciary" means personal representative or trustee. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(b). Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this Code, the method described in the will controls.

[1979, c. 540, §1 (NEW) .]

(c).

(1). The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax. [1979, c. 540, §1 (NEW).]

(2). If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable. [1979, c. 540, §1 (NEW).]

(3). If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge him with the amount of the assessed penalties and interest. [1979, c. 540, §1 (NEW).]

(4). In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Code the determination of the court in respect thereto shall be prima facie correct. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(d).

(1). The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to him, the amount of tax attributable to his interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this Act. [1979, c. 540, §1 (NEW).]

(2). If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(e).

(1). In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax. [1979, c. 540, §1 (NEW).]

(2). Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal. [1979, c. 540, §1 (NEW).]

(3). Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment. [1979, c. 540, §1 (NEW).]

(4). Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax. [1979, c. 540, §1 (NEW).]

(5). To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b), and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under Section 2053(d) of the Internal Revenue Code of 1954, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

(f). No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

[1979, c. 540, §1 (NEW) .]

(g). Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the 3 months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the 3 months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

[1979, c. 540, §1 (NEW) .]

(h). A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

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